IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1136

THE STATE OF CALIFORNIA,

Petitioner,

v.

PATRICK STEVEN W.,

Respondent.

ON WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL SECOND APPELLATE DISTRICT DIVISION FOUR

PETITION FOR WRIT OF CERTIORARI

GEORGE DEUKMEJIAN
Attorney General of the State of California
JACK R. WINKLER, Chief Assistant
Attorney General - Criminal Division
DANIEL J. KREMER,
Assistant Attorney General
HARLEY D. MAYFIELD,
ROBERT M. FOSTER,
Deputy Attorneys General

110 West "A" Street, Suite 600
San Diego, California 92101
Telephone: (714) 237-7852

Attorneys for Petitioner

INTERIM PRINTING & MAILING COMPANY
1105 WEST MORENA BOULEVARD, SAN DIEGO, CALIFORNIA 92110 — 275-3050

TOPICAL INDEX

TOPICAL INDEX (Continued)

TOPICAL INDEX (Continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Continued)

IN THE

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OCTOBER TERM 1978

No. _____

THE STATE OF CALIFORNIA,
Petitioner,

v.

PATRICK STEVEN W.,
Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of California, respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the California Court of Appeal, Second Appellate District, Division Four entered in this proceeding September 1, 1978, reversing a judgment adjudicating respondent to be a ward of the juvenile court and committing him to the California Youth Authority for having committed murder in violation of California Penal Code, section 187.

OPINIONS BELOW

The opinion for the Court of Appeal, Second Appellate District, Divison Four is reported as *In re Patrick Steven W.* (1978) 84 Cal.App.3d 520; 148 Cal.Rptr. 735. A copy of that opinion appears as Appendix A to this petition. The order of the California Supreme Court issued on October 25, 1978, refusing to grant a hearing in this case appears as Appendix B to this petition.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under Title 28, United States Code, section 1257(3) to review a judgment of the California Court of Appeal, Second Appellate District, Division Four which was entered on September 1, 1978. The California Supreme Court denied a hearing in this case on October 25, 1978. The present petition for Writ of Certiorari is filed within the required 90-day period following entry of final judgment. The judgment of the Court of Appeal became final for purposes of this Court with the denial of the hearing by the California Supreme Court on October 25, 1978. (*Market Street Railroad Co. v. Railroad Commission* (1944) 324 U.S. 548, 550-552.) Thus, the instant judgment is a final decision rendered by the highest court of the State of California interpreting rights under the United States Constitution.

QUESTIONS PRESENTED

1. Must a juvenile who has been given his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 and who understands and waives those rights and has not asked to speak with either his parents or an attorney nevertheless be required to speak with some adult relative as a necessary prerequisite to a valid confession to a murder?

2. Moreover, in such a situation, must the police bear the additional responsibility of locating some adult relative to whom the juvenile can speak before commencing any custodial interrogation of that juvenile?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

United State Constitution, Amendment XIV, in relevant part:

> "SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> . . ."

STATUTES INVOLVED

California Penal Code, section 26 in relevant part:

> All persons are capable of comitting crimes except those belonging to the following classes:
>
> One. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.

California Penal Code, section 187 in relevant part:

> (a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

California Welfare and Institutions Code, section 602:

> "Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which, may adjudge such person to be a ward of the court."

STATEMENT OF THE CASE

A. STATEMENT OF THE PROCEEDINGS

Respondent is a minor who was committed to the California Youth Authority as a ward of the Superior Court of the State of California in and for the County of Los Angeles on August 12, 1977, following the juvenile court's finding under

California Welfare and Institutions Code, section 602 that respondent had murdered his stepfather in violation of California Penal Code, section 187.

On September 1, 1978, the Court of Appeal of the State of California, Second Appellate District, Division Four, reversed the judgment in a unanimous opinion. (See Appendix A.)

Peitioner's application to the California Supreme Court for a hearing was denied on October 25, 1978. However Justices Clark and Richardson were of the opinion that a hearing should have been granted. (See Appendix B.)

On motion of petitioner, the California Court of Appeal, Second Appellate District, Division Four stayed issuance of the remittitur in this case pending action by the United States Supreme Court on this petition for a Writ of Certiorari.

B. STATEMENT OF FACTS ADDUCED AT THE JUVENILE COURT ADJUDICATION HEARING

On January 21, 1973, Bonnie Sue Bullis and her husband, Edward, were married. (R.T. 4, 6.)[1/] Mrs. Bullis had two children from a prior marriage, Patrick and Deanna. (R.T. 6,

1/ "R.T." refers to the "Reporter's Transcript" of the trial court proceedings and which was included as part of the record before the California Court of Appeal.

94.) Mrs. Bullis worked in a bird store. (R.T. 167, 265-266.) Edward Bullis was a police officer for the Los Angeles Police Department. (R.T. 45, 170.) In February, 1977, they lived at 5049 Escondido Canyon Road, Acton, California. (R.T. 3.)

Edward Bullis and his stepson Patrick did not get along very well, and they often quarreled. (R.T. 6, 114.) On Tuesday, February 22, 1977, Edward and Patrick got into an argument over Patrick's treatment of his sister, Deanna. (R.T. 94-99.) During the argument Edward apparently choked respondent into unconsciousness. (R.T. 99, 107.)

Respondent decided he was going to kill his stepfather and on Wednesday, the 23rd of February, he got ready but "chickened out" before his father came home. (R.T. 95, 100.) The next day, Thursday, February 24, 1977, around noon, respondent took his father's 30.06 rifle from under his parents' bed. (R.T. 95; Peo. exh. 12, p. 6.) Since the gun was unloaded, respondent took some ammunition from the bedroom and loaded the gun. (Peo. exh. 12, p. 6.) Respondent took a practice shot in the backyard while waiting for his father to come home from work. (Ibid. at 7.) Respondent told his sister to start packing food and clothing and blankets that the two of them would need after the killing. (R.T. 95.) Respondent had his sister look outside and tell him when his stepfather arrived home and when he was coming through the gate. (R.T. 97.)

Around 5:30 p.m., the victim arrived home, checked the mail box, opened the gate, drove his van up, closed the gate and pulled in. (Peo. exh. 12, p. 4.) Respondent had the rifle ready and leaning on a chair. (*Id.* at p. 5.) When the victim began to open a sliding glass door leading into the house, respondent

shot him, aiming at the area around the stomach. (*Id.* at p. 7.) Respondent then went outside near the body and shot at it two more times. (*Id.* at p. 8.) The victim died as a result of massive hemorrhage as a consequence of a gunshot wound to the head. (R.T. 1-2.)

Respondent went through Edward's clothing, taking some $551 from the decedent's wallet, as well as his service revolver. (*Id.* at pp. 9, 12.) Respondent then began to drag the body into the backyard but this proved very difficult. He tied a rope from the body to the van and used the van to drag the body to a hole in the backyard. (*Id.* at p. 9.) Respondent then buried the body. (*Id.* at pp. 9-10.) Respondent and his sister took the suitcases Deanna had packed and left. (R.T. 95; Peo. exh. 12, p. 10.)[2/]

Respondent and his sister were hitchhiking along the Los Angeles Highway, Route 14. Mr. David Trout, principal of the Agua Dulce School had gotten a report of two possible truants hitchhiking along the road. He drove along the highway and saw respondent and his sister. (R.T. 15-16.) Mr. Trout asked who they were since they had just started attending his school and he did not know them from firsthand experience. (R.T. 16.) Respondent asked who Trout was and why he was concerned about them. Mr. Trout explained who he was and said he had heard they were not in school. (R.T. 16-17.)

2/ Most of the material contained in this and the preceding two paragraphs comes not from actual in-court testimony, but from the contents of respondent's confession (Peo. exh. 12), which was admitted into evidence by the trial court. (R.T. 88-89.) This exhibit was also before the Court of Appeal.

Respondent and his sister then identified themselves. Trout said he would take them back to the school. Patrick was reluctant to get in the car and said he could not tell Mr. Trout why. Trout assumed it had something to do with a truancy problem and offered to help solve any problems respondent had. (R.T. 18.) Finally, respondent said he could not go back. He had shot his father and he could not face his mother. (R.T. 17, 18, 19.) Trout convinced respondent it was best to go back and get it straightened out. Moreover, Trout offered to help. (R.T. 18-19.) Respondent then got into the car. (R.T. 18.) On the way back, respondent talked freely and said he knew he had killed his stepfather because he had buried his stepfather's body. (R.T. 19.) Trout took respondent and his sister back to Agua Dulce School, called the authorities, and later turned them over to sheriff's deputies. (R.T. 20.) The deputies advised respondent of his rights. (Peo. exh. 12, p. 12; R.T. 64-67.)

Later that evening respondent was interviewed by two Los Angeles County Sheriff's Officers Villareal and Rasure. (R.T. 41, 80-81.) The officers carefully explained all of respondent's rights and then had respondent state the rights in his own words to be certain he comprehended them. (See Peo. exh. 12, p. 1.) Then the officer asked:

> "[By Officer Villareal]
>
> "Q. Do you want to talk about the case?
>
> "A. [By appellant] I guess, if it's gonna be best.
>
> "Q. Well, that's up - up to you, you know, you have your rights to be protected, you know, you have the rights and so on, and also that - that

uh, the reason we explain these things to you is so you know what your rights are.

"A. Un-huh.

"Q. So, and that's why we ask you that if you can (unintelligible) that we don't want to force you or coerce you in any form or way.

"A. Yeah.

"Q. You - you understand that?

"A. Yes.

"Q. Okay, and that's why - that's why we ask you if - if you wanted to talk or not?

"A. Yeah.

"Q. Okay. Do you want an attorney or not?

"A. I'm not sure, I'll have to talk to my parents, to my mother, I don't know.

"Q. Okay, do you want to see your mother?

"A. No, not really. Just answer questions whatever you want or - - -

"Q. You just want to talk about the case, huh?

"A. I guess.

"Q. Get it all out?

"A. What - whatever you want is fine, right.

"Q. Okay. What we want is just you know, to find out the truth, what happened, you know

and that's all, but again, we also want to protect your rights, and that's why we're going through what we have and what we're doing here. Can you scoot up a little bit here so everything (Unintelligible). Okay, then, my partner is Duane Rasure, he's going to be asking you some questions and anything - and at anytime, anytime during this, when we're talking to you, if you don't want to say anything, you just want to quit talking, you tell us, okay?

"A. Uh-huh.

"Q. You understand that?

"A. Yes.

"Q. Okay, and that's at any point?

"A. Alright."
(Peo. exh. 12, p. 2.)

Following this portion of the interrogation, appellant went on to describe in great detail his murder of his stepfather. (*Id.* at pp. 3-14.)

Respondent's Grandparents

Around 6:30 p.m. on the afternoon of the killing, respondent's maternal grandparents, Mr. and Mrs. Lovelace, who had heard of the killing, were at respondent's home. (R.T. 48-49.) Although the investigation was being carried out by the Los Angeles County Sheriff's Office, there were several Los Angeles police officers present, since the victim had been a member of that force. (R.T. 45, 170.) Mrs. Lovelace approached one of the Los Angeles police officers, identified herself as respondent's grandmother and asked to see

respondent and his sister. (R.T. 49-51, 56) She was told by the Los Angeles police officer that the two juveniles were being interrogated and could not be seen for 24 hours. (R.T. 52.)

Sergeant Rasure was not present during this conversation. (R.T. 44.) Moreover, it was the policy of his department to let a parent communicate with an arrested juvenile upon request. (R.T. 45.) Mr. and Mrs. Lovelace and respondent's mother got a motel room nearby. (R.T. 83.) After hearing a report on the 11 o'clock news, Mrs. Lovelace called the sheriff's office and talked to Sergeant Rasure. (R.T. 83-84.) Sergeant Rasure told Mrs. Lovelace that if she came to the station Deanna would be released to her. (R.T. 83-84.) When the Lovelaces went to the station, they asked to see respondent. (R.T. 53.) They were told respondent did not want to see anybody. (R.T. 53.) It was after 11 p.m. (R.T. 83-84.) The questioning of respondent had begun over an hour earlier at 10 p.m. (R.T. 40-41.)

The Trial Court's Ruling

The trial court ruled that the statement was admissible. (R.T. 89.) In so ruling the court stated,

> ". . . the totality of the situation indicates a knowing and intelligent waiver.
>
> "I have to take a number of things into consideration here. There is no doubt in my mind that the young man knew exactly where he was and what it was about, and he understood those rights.
>
> "He had a decision to make. Considering his situation, it was not a particularly easy

> decision to make. You can practically hear his mind working when he decided to do it.
>
> "Now, this kind of decisionmaking is going to be somewhat reluctant most of the time, don't you think, when you have to make an agonizing decision? And, that's what he was doing.
>
> "I am quite convinced that that is the way it comes out. I have seldom heard a minor as conscientiously advised of his rights as I have in this instance. As a matter of fact, it is one of my criticisms of a number of people who deal with children, that they rattle off the rights like they were talking to adults. That's bad form.
>
> "It is a good idea to paraphrase and go over it and ask certain questions. And, that was done here.
>
> "This was a good job of giving the rights, in my opinion. And, as I say, the law was complied with more than substantially in my opinion, and that statement is admissible." (R.T. 88-89.)

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

I.

THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR, HAS IMPROPERLY INTERPRETED *MIRANDA v. ARIZONA* AND *GALLEGOS v. COLORADO* TO MAKE SPEAKING WITH AN ADULT RELATIVE A NECESSARY PREREQUISITE TO A VALID CONFESSION BY A JUVENILE EVEN IN THOSE SITUATIONS WHERE THE JUVENILE HAS STATED HE DOES NOT WISH TO SPEAK WITH EITHER HIS PARENTS OR AN ATTORNEY

A. THE *MIRANDA* EXCLUSIONARY RULE BASED ON THE REQUIREMENT OF SPECIFIC ADVISEMENTS AND WAIVERS OF RIGHTS HAS NOT BEEN EXTENDED BY THIS COURT.

> "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence." (*Miranda v. Arizona* (1966) 384 U.S. 436, 478.)

When this Court rendered its far-reaching decision in *Miranda v. Arizona, supra,* it did so in the context of a philosophy that while involuntary confessions are constitutionally unacceptable, the admission of a suspect's statement that is the product of his free will is an acceptable and useful tool of law enforcement. As such, the rule announced in *Miranda* attempted a balance between the community's need for effective enforcement of the criminal

law and the individual's rights under the Fifth and Fourteenth Amendments.

This Court has never acted so as to expand the requirements set forth in *Miranda* as necessary prerequisites of a valid confession. However, the California Court of Appeal, Second Appellate District, Division Four has, by its opinion in the case at bar, made such an expansion. In a factual situation where the explicit requirements of *Miranda* were met, the California Court nevertheless suppressed the confession because the juvenile involved had not first talked with some adult relative or other advisor. This has resulted in an improper expansion of the holding of this Court in *Miranda.*

While over the years this Court has made certain exceptions to the exclusionary rule set forth in *Miranda* it has never expanded the number of advisements or waivers originally required by *Miranda.* The rule of *Miranda,* establishing specific warnings and waivers as a prerequisite to the admission of statements obtained during custodial interrogation, was criticized by the dissenters in that opinion because of its excessive rigidity. Justice Clark warned that: "[s]uch a strict constitutional specific inserted at the nerve center of crime reduction may well kill the patient." (*Miranda v. Arizona, supra,* at pp. 500-501 (Clark, J., dissenting).) In recent years, this Court has ruled that the rigid exclusionary rule established in *Miranda v. Arizona, surpa,* is not without exceptions. In *Michigan v. Tucker* (1974) 417 U.S. 333, 446-452, this Court held that not all fruits of a confession obtained in violation of the requirements laid down in *Miranda* would be required to be suppressed where a suspect's confession was obtained prior to

the *Miranda* decision but his trial conducted after the decision. In making its holding the Court noted:

> "The [*Miranda*] Court recognized that these procedural safeguards were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected. As the Court remarked:
>
> > '[W]e cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted.' "
>
> (Citations omitted.) (*Michigan v. Tucker, supra,* at p. 444.)

This Court has also held that the invocation by a suspect of his Fifth Amendment right as to one charge does not necessarily require exclusion of a confession obtained after a reiteration of *Miranda* rights at a later time on a different charge. (*Michigan v. Mosley* (1975) 423 U.S. 96, 104-107.)

In *Harris v. New York* (1970) 401 U.S. 222, 225-226, a statement obtained in violation of a suspect's *Miranda* rights was held admissible to impeach a testifying defendant, and in *Oregon v. Hass* (1975) 420 U.S. 714, 719, the Court held admissible for impeachment purposes a statement made by defendant even though the defendant had previously exercised his *Miranda* rights by requesting to speak to his attorney.

It is noteworthy that while this Court has made exceptions to the exclusionary rule imposed by *Miranda*, the Court has in no case expanded the number of advisements and waivers originally required by *Miranda*. Nor has this Court ever held as a matter of law that a necessary prerequisite to any juvenile confession is a discussion between that juvenile and some adult relative or advisor.

B. IN JUDGING THE VALIDITY OF ANY WAIVER OF *MIRANDA* RIGHTS THE TOTALITY OF THE CIRCUMSTANCES MUST BE EVALUATED BY THE COURTS.

As this Court made clear in *Gallegos v. Colorado* the voluntariness of a juvenile confession is to be judged by the totality of the circumstances surrounding the confession. (*Gallegos v. Colorado* (1962) 370 U.S. 49, 55.) This Court made clear that no one factor controlled but that each of the surrounding circumstances had to be evaluated in light of the other circumstances. (*Id.* at 54-55.)

Moreover, this totality of the circumstances test is to be used in evaluating waivers of *Miranda* rights. (*Schneckloth v. Bustamonte* (1972) 412 U.S. 218, 226.) The California Supreme Court had independently recognized this as the proper test to be applied. (*People v. Lara* (1967) 67 Cal.2d 365, 383-384, 62 Cal.Rptr. 586, 598-599; *People v. Johnson* (1969) 70 Cal.2d 541, 556-558, 75 Cal.Rptr. 401, 411-412.)

C. THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR, IMPERMISSIBLY EXTENDED THE HOLDINGS OF *MIRANDA v. ARIZONA, SUPRA,* AND *GALLEGOS v. COLORADO, SUPRA,* BY HOLDING THAT SPEAKING WITH AN ADULT RELATIVE WAS A NECESSARY PREREQUISITE TO A VALID JUVENILE CONFESSION EVEN IN THOSE SITUATIONS WHERE THE JUVENILE STATES HE DOES NOT WISH TO SPEAK WITH EITHER HIS PARENTS OR AN ATTORNEY.

A minor is not as a matter of law, incapable of making a voluntary confession. (See discussion *In Re Gault* (1967) 387 U.S. 1, 44-56.) This same principle has been recognized by the California Supreme Court which has held that age alone does not render a juvenile incompetent as a matter of law to waive his *Miranda* rights. (*People v. Lara* (1967) 67 Cal.2d 265, 383; 62 Cal.Rptr. 586, 596; *In Re Dennis M.* (1969) 70 Cal.2d 444, 463-464; 75 Cal.Rptr. 1, 12-13.)

In adopting the totality of the circumstances test promulgated by this Court in *Gallegos v. Colorado, supra,* the California Supreme Court stated:

> "Such adult consent is, of course, to be desired, and should be obtained whenever feasible. But as we will explain, whether a minor knowingly and intelligently waived these rights is a question of fact; and a mere failure of the authorities to seek the additional consent of an adult cannot be held to outweigh, in any given instance, an evidentially supported finding that such a waiver was actually made." (*People v. Lara, Id.* at p. 379.)

In the case at bar, the trial court specifically held that the minor had made a knowing and intelligent waiver of his rights. (R.T. 89.) The Court of Appeal in its opinion did not disagree with this finding. In fact, the Court of Appeal specifically stated that the appellant had demonstrated an understanding of the *Miranda* admonitions given to him. Yet, the Court went on to reverse stating that a 13-year-old juvenile could not comprehend the meaning or consequences of his statements without first talking to an adult relative. (*In Re Patrick Steven W., supra,* 84 Cal.App.3d at 526.) This holding not only ignores the finding of the trial court, but also is in direct conflict with the prior rulings of this Court. The opinion of the Court of Appeal makes the age of the respondent the sole determining factor in its decision. Such a test ignoring the totality of the circumstances, and centering only upon the chronological age of the respondent clearly violates the rule set forth by this Court in *Gallegos v. Colorado, supra.* The Court of Appeal's opinion thus isolates one factor out of the totality of the circumstances and makes it the necessary prerequisite of a valid juvenile confession. This is a vast expansion of the rules of law laid down by this Court in both *Miranda* and *Gallegos.*

There is no evidence in the record to even remotely suggest that the respondent did not knowingly and intelligently waive his rights prior to his making a confession. (R.T. 89-90.) Lacking such evidence, the Court of Appeal chose to rely on dicta from this Court characterizing the mental capacity of a different 14-year-old. (84 Cal.App.3d 520 at 525, citing *Gallegos v. Colorado* (1962) 370 U.S. 49, 54.) But even *Gallegos* goes on to reaffirm the use of the test of the totality of the circumstances. (*Id.* at p. 55.)

Moreover, it must be remembered that neither this Court nor the California Supreme Court has held that allowing the juvenile to consult with a parent or guardian is required as a necessary prerequisite to a valid confession. (*People v. Lara, supra,* 67 Cal.2d at p. 379.) The suggestion by the California Sureme Court in *Lara* did not go so far as to even remotely suggest that when the juvenile states he does not want to see a lawyer or his parents, as is the case here, that the police must nevertheless go out and find some friend or relative of the appellant's and force a meeting before obtaining a confession. But, that is the clear implication of the holding of the Court of Appeal. The opinion implies that if a young juvenile cannot give a valid confession without first talking to his parents and if that juvenile refuses to see either or both of his parents, the police then have a duty to find some relative to whom the juvenile can talk in order to obtain a valid confession. Such a court imposed rule would be a squandering of scarce police resources without any resulting improvement in the juvenile justice system.

It should be noted that it was the policy of the Los Angeles County Sheriff's Office to allow a parent to see an arrested juvenile upon request. (R.T. 45.) There is no showing in the record that respondent's mother even asked to see her son. Moreover, the only time respondent's grandparents asked members of the sheriff's office to see respondent was over an hour after respondent had confessed. (R.T. 40-41, 84.) To hold that the police officers' failure to honor the grandparents' request, made long after the confession, is a factor that supports the suppression of respondent's confession, simply defies all logic.

Finally, even assuming arguendo that the officers had refused a request made to them before the confession, that fact alone is not a sufficient basis to suppress the confession. In *People v. Schwartzman* (1968) 266 Cal.App.2d 870; 72 Cal.Rptr. 616, a juvenile was being questioned by the police about a crime. His father, a police officer, came to the station and asked to see his son. The officers refused. (*Id.* at pp. 885-886.) The court upheld the confession stating,

> ". . . The minor's capacity to waive his right to an attorney is a function of his individual intelligence, competence, and ability, unrelated to the desires or intentions of his parents.
>
> ". . .
>
> ". . .
>
> ". . . The failure of the police to respond to the father's request does not affect the validity of . . . [the] waiver. . . ." (*Id.* at pp. 885-886.)

The Court in *Schwartzman* correctly recognized that where a juvenile does not request to see an adult, the validity of the confession is then dependent on what is going on around him and in his mind and not on factors of which he is totally unaware. So, in the case at bar, since there is a positive finding in the record that appellant's waiver of his *Miranda* rights was knowing and intelligent, it was improper for the Court of Appeal to reverse solely because respondent had not talked to an adult before making his confession.

Thus it is clear that the ruling of the California Court of Appeal, Second District, Division Four was incorrect and has resulted in a great expansion of the holding of this Court in

both *Miranda* and *Gallegos*. It is well settled that a state may not as a matter of federal Constitutional law impose greater *Miranda* restrictions when this Court specifically refrains from imposing them. (*Oregon v. Hass* (1975) 420 U.S. 714, 719.) Petitioner submits in a case such as this when a lower state court has read *Miranda* too broadly it is appropriate for this Court to grant a Writ of Certiorari in order to insure that the rule adopted in *Miranda* and *Gallegos* are confined to the express terms and logic of the original opinion and that *Miranda* is not cut "loose from its own explicitly stated rationale." (*Beckwith v. United States* (1976) 425 U.S. 341, 345.)

II.

THE OPINION BELOW IS BASED EXCLUSIVELY ON FEDERAL CONSTITUTIONAL AUTHORITY

The instant decision of the California Court of Appeal, Second Appellate District, Division Four was based solely upon an interpretation of the Federal Constitution, *Miranda v. Arizona, surpa,* and *Gallegos v. Colorado, surpa.* There are no references to state statutory or constitutional grounds. *In re Patrick Steven W.* (1978) 84 Cal.App.3d 520, 524-528; 148 Cal.Rptr. 735, 737-740.) The state case relied upon by the Court of Appeal, *People v. Lara* is in turn based solely upon the Federal Constitution, *Miranda* and *Gallegos.* (See *People v. Lara, supra,* at 381-391.)

For the foregoing reasons, petitioner submits that the opinion below is based exclusively upon federal constitutional authority and is properly the subject of review by this Court on Writ of Certiorari.

CONCLUSION

For the foregoing reasons, petitioner submits that a Writ of Certiorari should be issued to review the decision of the California Court of Appeal, Second Appellate District, Division Four.

Respectfully submitted,

GEORGE DEUKMEJIAN
Attorney General of the State of California
JACK R. WINKLER, Chief Assistant
Attorney General - Criminal Division
DANIEL J. KREMER
Assistant Attorney General
HARLEY D. MAYFIELD
Deputy Attorney General
ROBERT M. FOSTER
Deputy Attorney General

Attorneys for Petitioner

APPENDICES

APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re PATRICK STEVEN W., A Person Coming Under the Juvenile Court Law.	2 Crim. No. 31806 (Super. Ct. Juvenile No. J813375)
THE PEOPLE, Petitioner and Respondent, v. PATRICK STEVEN W., Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. David N. Fitts, Judge. Reversed.

Jerry D. Whatley and Lonnie B. Springer, Jr. for Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Daniel J. Kremer, Assistant Attorney General, Harley D. Mayfield and Robert M. Foster, Deputy Attorneys General, for Petitioner and Respondent.

A petition was filed in the Los Angeles County Juvenile Court alleging that Patrick Steven W., 13 years of age, was a minor coming within the provisions of section 602 of the Welfare and Institutions Code in that he had committed the crime of murder. The minor appeals from the order of the court sustaining the petition, declaring the minor a ward of the court and committing him to the California Youth Authority.

In February 1977, the minor lived in Acton, California, with his mother, a sister Deanna, age 11, and his stepfather, Edward Bullis, a Los Angeles police officer, who had married the minor's mother in 1973. Patrick and his stepfather did not get along well together, had often quarreled, and on some occasions there had been physical mistreatment of the boy by his stepfather. The mother worked in Los Angeles and was away from home much of the time.

On the afternoon of February 22, 1977, Deanna complained to her stepfather that the minor had fought with her and had caused her to cry. The stepfather became so angry that he choked the minor into unconsciousness. On the following day the minor got his stepfather's rifle and loaded it while both parents were gone, telling his sister that he wanted to kill the stepfather, but then he "chickened out" and put the rifle away before Mr. Bullis came home. On the next day, however, after the parents had left, the minor told his sister to stay home from school, said he was going to kill Mr. Bullis and again obtained the rifle, loaded it and took a practice shot with it while waiting for the stepfather to return from work. As Bullis arrived home about 5:30 p.m. and started to enter the house through a sliding glass door he was shot fatally in the chest. The minor then took money from the decedent's pocket, buried the body and left home with his sister, spending the night on a hill nearby.

On the following day the minor's school principal received a phone call from a motorist who had picked up the minor and his sister

hitchhiking on the freeway. The minor had admitted they were running away from home and the motorist had left them at an off-ramp in Saugus. The principal drove to that location, saw the children and told them he would drive them back to school. The minor was reluctant to get in the car saying that "he just couldn't go back, and he couldn't face his mother" and finally stating that he had shot and buried his stepfather. The minor and his sister were then persuaded to enter the principal's car and he drove them to the school where they were taken into custody by sheriff's deputies. Decedent's body had been discovered in the meantime by Los Angeles police officers who had gone to the Acton home in response to Mrs. Bullis' report that decedent and the two children were missing. The minor's maternal grandparents had also arrived in Acton by the time the body was found. They were told that the two children were being taken to the Antelope Valley Sheriff's office in Lancaster for questioning. The grandparents arranged to stay at a motel in Palmdale with the mother that night and informed a sheriff's deputy where they would be. Earlier the grandparents had been told that they would not be able to visit the minor for a period of 24 hours, although this statement was probably not made by a sheriff's representative but rather by one of the Los Angeles police officers who had gone to the Bullis home voluntarily to help in the search for their fellow officer.

The minor was interviewed by Detectives Rasure and Villarreal at approximately 10:00 p.m. that night in the Antelope Valley Sheriff's station, some three and one-half hours after being taken into custody. After being properly advised of his *Miranda* rights and indicating his understanding of them the minor was asked if he wanted to talk about the case. He replied "I guess, if it's gonna be best." Deputy Villarreal then went on to explain that this was a matter for the minor to decide, that the officers did not want to force him or coerce him in any way and the minor again indicated his understanding. The conversation then continued as follows:

"Q. Okay, and that's why-that's why we ask you if-if you wanted to talk or not?

"A. Yeah.

"Q. Okay. Do you want an attorney or not?

"A. I'm not sure, I'll have to talk to my parents, to my mother, I don't know.

"Q. Okay, do you want to see your mother?

"A. No, not really. Just answer questions whatever you want or–

"Q. You just want to talk about this case, huh?

"A. I guess.

"Q. Get it all out.

"A. What-whatever you want is fine, right."

The minor then made a full and detailed confession of the killing of his stepfather, which was admitted in evidence at the adjudication hearing.

The minor now contends that his confession should not have been admitted in evidence because the prosecution failed to show that there had been a valid waiver of his right against self-incrimination. In the absence of such waivers statements made by a minor while in custody are inadmissible in a juvenile court proceeding under Welfare and Institutions Code section 602. (*In re Roderick P.* (1972) 7 Cal.3d 801.) Also, a minor's request to see one of his parents when subjected to custodial interrogatin is to be construed as an indication that the minor desires to invoke his Fifth Amendment rights and questioning must then immediately cease. (*People v. Burton* (1971) 6 Cal.3d 375.)

Although our Supreme Court in *People v. Lara* (1967) 67 Cal.2d 365, refused to require an adult's consent as a condition to a minor's waiver of his privilege against self-incrimination, it did state that such consent is to be desired and should be obtained whenever feasible. Whether or not such adult advice was sought and obtained for a minor is a factor to be considered in determining the admissibility of a minor's confession to the police. As the United States Supreme Court stated in reference to a 14-year-old whose confession was held inadmissible: "The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents. But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. . . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights–from someone concerned with securing him those rights–and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not." (*Gallegos v. Colorado* (1962) 370 U.S. 49, 54.)

In the present case the minor indicated uncertainty when asked by the deputy whether he wanted an attorney, saying that he would have to talk to his mother. When asked if he wanted to see her he (understandably) said "No, not really" and stated further, with some encouragement from the form of the officer's question, that he was willing to talk about the incident. At least one of the deputies present (Sgt. Rasure) while the questions were asked knew that the minor's maternal grandparents were with the mother at a nearby motel, a fact apparently unknown to the minor, and also knew that they were greatly concerned about the minor and his sister. Shortly after the minor had completed his confession telephone arrangements were

made with the grandparents to pick up the sister from the sheriff's station, and this was done. Under these circumstances we perceive no reason for the sheriff's deputies not seeking the presence of the grandparents as responsible adults to counsel with the minor before he was questioned. We think that the recommendation in *People v. Lara, supra,* 67 Cal.2d 365, that such procedure be followed comes close to being a mandate when dealing with a 13-year-old boy suspected of murder. The minor had already voiced difficulty in facing his mother, whom he rightly assumed to be highly distraught at the time. If he had been made aware of his grandparents' concern and that they were near there is good reason to believe that he would have sought their advice before responding to the officers' questions.

Also, although the minor showed understanding of the *Miranda* admonitions as explained to him by the deputies he would not, of course, have been likely to fully "comprehend the meaning and effect of his statement" (*People v. Lara, supra,* 67 Cal.2d at p. 383): for example, its use in this case to refute an expert's opinion concerning the minor's diminished mental capacity to commit the crime charged. To those who argue that the same thing can be said of an adult whose confession is used against him, the simple answer is that the courts have always given more zealous protection to minors' rights, under both criminal law and civil, because of their relative helplessness when dealing with adults by reason of immaturity. We therefore hold that the minor's confession in the present case was inadmissible on the totality of the circumstances present. Since the admission of a confession obtained in violation of *Miranda* principles constitutes reversible error per se (*In re Michael C.* (1978) 21 Cal.3d 471, 478) the order declaring the minor a ward of the court must be reversed. Even without the rule of *In re Michael C., supra,* reversal would have been required because, although there was other evidence admitted which showed that the minor had killed his step-father, the court relied on the confession in rejecting a claim of the minor's diminished mental capacity.

Since a rehearing will be required in this case we address ourselves to the minor's further contentions on appeal that evidence of the circumstances pertaining to the crime should not be admissible to show his knowledge that the act was wrongful when committed, that statements made by the minor in respect to that issue are not admissible and that the court should determine that issue separately before receiving other evidence on adjudication pursuant to Welfare and Institutions Code section 602.

Penal Code section 26(1) provides that children under the age of 14 years are incapable of committing a crime "in absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." This requirement applies as well to juvenile court proceedings under section 602 of the Welfare and Institutions Code charging the minor with having committed a c i e. (*In re Gladys R.* (1970) 1 Cal.3d 855.)

"Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated a criminal law should he be declared a ward of the court under section 602." (*In re Gladys R. supra,* 1 Cal.3d at p. 867.) To prohibit evidence as to the child's conduct on the occasion in question would often result in omission of the only truly relevant evidence on the subject. In the present case, for example, we would be left with evidence that the minor, 13 years of age, is a bright boy whose mother told him it was wrong to hurt people and that in her opinion the minor knows that it is wrong to shoot another person -- hardly the "clear proof" required by Penal Code section 26(1). Turning to evidence of the minor's conduct on the occasion in question, however, and the two days preceding, there are numerous circumstances which in our opinion were relevant to show that the minor knew the wrongfulness of his act at the time it was committed and collectively satisfy the "clear proof" requirement of section 26(1).

It should be noted also that the minor himself presented psychiatric testimony on the issue, to the effect that the minor was a victim of transient psychosis at the time of the killing and unaware that his act was wrongful. The doctor's opinion included a consideration of the circumstances surrounding the event, without which such evaluation would be of little or no value. The judge as fact finder rejected the evidence, as he had a right to do. (Pen. Code, § 1127b.) Certainly, however, the apparently intentional killing of his stepfather by a 13-year-old boy is so abhorrent and abnormal that psychiatric evaluation would be essential, and that would necessarily include consideration of and testimony concerning the minor's conduct at the time of the crime charged.

Although most of the above facts were proved by witnesses other than the minor, his declarations can also be considered for the purpose. (*In re Tanya L.* (1977) 76 Cal.App.3d 725.) The case of *In re Michael B.* (1975) 44 Cal.App.3d 443, involving a nine-year-old charged with a burglary of an automobile is not to the contrary, but simply holds that the child's admission that he knew such conduct was wrong was not sufficient by itself to meet the burden of proof under the facts of that case.

Finally, on the Penal Code section 26(1) issue in this case there is no reason to hear and rule on that issue before hearing other evidence on the adjudication issue, since the same evidence of the minor's conduct and declarations would be admissible on each, as stated above. In this respect it is unlike the social study report concerning a minor, which may contain a great deal of legally incompetent background material that might tend to be prejudicial

and therefore must be read only after determining the adjudication issue. (See *In re Gladys R., supra,* 1 Cal.3d at pp. 859-862.)

The order is reversed.

CERTIFIED FOR PUBLICATION

JONES, J.*

We concur:

KINGSLEY, Acting P.J.

JEFFERSON (Bernard) J.

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* Assigned by the Chief Justice of California.

APPENDIX B

ORDER DUE
October 31, 1978

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 4, Crim. No. 31806

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

IN RE PATRICK W., A PERSON COMING UNDER THE JUVENILE COURT LAW

PEOPLE

v.

STEVEN W.

Respondent's petition for hearing DENIED.

Clark, J., and Richardson, J., are of the opinion that the petition should be granted.

SUPREME COURT
FILED
OCT. 25, 1978
G. E. BISHEL, CLERK

.....
Deputy

BIRD

.....
Chief Justice